

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 592 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BAI BISMILLA DAUGHTER OF NATHUBHAI

Versus

IJABULLAKHAN SERFERAJKHAN

Appearance:

MR PV NANAVATI for Petitioners

MR GR SHAIKH for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
Date of decision: 09/08/1999

ORAL JUDGEMENT

The appellants-original defendants by filing this First Appeal under section 9 of the Ahmedabad City Civil Court Act, 1961 (for short, 'the Act'), read with section 96 of the Code of Civil Procedure, have challenged the legality and validity of the judgment and decree dated January 31, 1980 passed by the learned Principal Judge, Court No.1, City Civil Court, Ahmedabad in Civil Suit No.2136/76.

2. Brief facts given rise to filing of this appeal

are as under:

The plaintiff own a Chawl in which there are several residential premises and they have been let to tenants. One of the premises is in occupation of the defendants. Defendant No.1 was doing household work of the plaintiffs and as she was in need of residence, and as the suit premises had fallen vacant, defendant No.1 was allowed to occupy the said premises without charging any rent. As per the say of the plaintiff, the defendant No.1 occupied the premises 'by leave and licence', the said leave and licence was terminated by the plaintiffs by a notice dated 27.4.1976. As the defendant No.1 did not comply with the notice terminating the 'leave and licence' and to hand over vacant possession of the suit premises, the plaintiffs filed the above suit in the City Civil Court for possession of the suit premises and mesne profits for the illegal occupation of the premises by the defendant No.1.

2. The defendants filed their written statements at Exh.9, inter-alia, contending that they are in occupation of the suit premises since last 20 years as tenant and paying monthly rent to the plaintiffs regularly but the plaintiffs were not issuing any rent receipts. It is further contended that as the defendants were the tenants of the suit premises, the City Civil Court has no jurisdiction to try and hear the suit. The defendants denied that the suit premises were given to them as the defendant No.1 was doing household work with the plaintiffs by way of 'leave and licence'. The defendants also contended that they were tenants in the suit premises since the time of the predecessor in title of the plaintiffs, and therefore, they are entitled to retain the suit premises as tenants, and therefore, the suit be dismissed with costs.

3. On the above pleadings of the parties, issues were framed at Exh.27 by the learned Principal Judge, Court No.1, City Civil Court, Ahmedabad.

4. In support of his case, plaintiff No.2-Abdulqayyum Sarfarajkhan was examined at Exh.29. On behalf of the defendants, defendant No.1-Bai Bismilla, daughter of Nathubhai was examined at Exh.49 and defendant No.2, Nazir Ahamad Rasulbux was examined at Exh. 56. The plaintiffs and defendants also produced documentary evidence, reference of which shall be made as and when necessary during the course of the judgment.

5. Learned Trial Judge, on overall appreciation of

the oral as well as documentary evidence, concluded that the defendants had given contradictory statement with regard to their status as tenants in the suit premises. It was further concluded that the defendants had failed to prove that they were tenants of the suit premises and were paying rent regularly to the plaintiffs. It was further concluded that the Municipal Tax bills produced by the plaintiffs showed that the suit premises were in occupation of the plaintiffs for several years and nowhere the names of the defendants were shown as tenants of the suit premises. The learned Trial Judge also concluded that the Assessment Officer of the Ahmedabad Municipal Corporation, in an enquiry with regard to the valuation of the suit premises had recorded the statement of the defendants wherein it was stated that the defendants were given the suit premises for use and occupation without payment of any rent. The trial Judge also concluded that the certified copy of the reply given by the present defendant No.2 in Misc. Application showed that the suit premises was given by the plaintiffs to defendant No.1 with a clear understanding that the defendant No.1 was permitted to occupy the suit premises by virtue of 'leave and licence'. The learned Trial Judge also concluded that the evidence produced by the plaintiffs showed that the defendant No.1 was doing the household work in their house formerly, and therefore, she was allowed to occupy a portion in a Dehla and as she found it inconvenient, and as the suit premises had fallen vacant at that time, she was allowed to occupy the same free of charges. The Trial Judge, concluded that the defendants were permitted to occupy the suit premises by 'leave and licence' and upon termination of the licence, they were liable to be evicted. The Trial Judge, further concluded that the defendants had not produced any evidence to show that they were paying monthly rent to the plaintiffs, and therefore, they were tenants of the suit premises. The learned Trial Judge, further concluded that the suit premises were situated in a Chawl belonging to the plaintiff and the plaintiff was issuing rent receipt to all the occupants-tenants of the Chawl regularly. It was further concluded that if the defendants were paying rent regularly then there was no reason for the plaintiffs not to give rent receipts to the defendants. The learned Trial Judge observed that the defendants had not been consistent in their say with regard to their having become the tenants of the suit premises and of the rent alleged to have been paid to the plaintiffs. On appreciation of the evidence led by the plaintiffs and the defendants, the learned Trial Judge observed that the evidence produced by the plaintiffs was inconsistent and not reliable. On the basis of the above

referred conclusions, the Trial Judge passed the decree directing the defendants to hand over possession of the vacant suit premises bearing Municipal Census No. 871/A/5 of Raikhad Ward to the plaintiffs. The learned Trial Judge also passed the decree directing the defendants to pay the mesne profits to the plaintiffs at the rate of Rs. 10/per month from the date of the suit till possession of the suit premises is handed over, for the illegal occupation of the suit premises. That decree which has given rise to filing of this appeal by the original defendants.

6. Learned Advocate for the appellants Mr P V Nanavati has taken me to the entire evidence on the record of the case and submitted that the learned Trial Judge had erred in holding that the defendants were not tenants in the suit premises. It is further urged that the defendants were paying rent regularly to the plaintiffs, and therefore, the learned Trial Judge has erred in not holding that the defendants were not the tenants of the suit premises, and therefore, the decree of possession should not have been passed. It is further urged that the learned Judge has erred in appreciating the oral evidence led by the defendants and had drawn adverse inference against the defendants which were not called for. It is further urged that the defendants were in occupation of the suit premises as tenants, and therefore, the decree passed by the learned Trial Judge is against the evidence on record and hence the appeals be allowed and the decree for possession be set aside.

7. Learned Advocate for the respondents has vehemently submitted that the conclusion arrived at by the trial court is quite proper and the Court below had properly appreciated the evidence led by the parties and rightly came to the conclusion that the defendant No.1 was given the suit premises on 'leave and licence' as she was doing household work in plaintiff's house. It is also urged that the defendants had not become the tenants and they were allowed to use the suit premises for occupation without charging any rent. It is submitted that the decree of possession passed by the trial court is legal and valid, and therefore, the appeal be dismissed with costs.

8. Submission of the learned Advocate for the appellants that the defendants were tenants of the suit premises is devoid of any merit. The defendants, in support of their case, did not produce any cogent and reliable evidence on the record to prove that they were tenants of the suit premises. On the contrary, it is

observed by the trial court that their version about occupying of the suit premises is quite inconsistent. The appellants were also not consistent in their say about what was the amount of rent they were paying to the plaintiffs. The evidence produced on the record of the case conclusively proved that the appellants were not occupying the suit premises by way of tenancy right.

9. The submission of the learned Advocate that as the dispute involved in the suit is between the landlord and the tenant, and therefore, the City Civil Court has no jurisdiction to decide the case, deserves to be rejected. The appellants had never acquired the status of a tenant and they were simply occupying the suit premises. No evidence was led that the appellants were paying rent to the respondents for occupation of the suit premises. Therefore, the suit was not between the landlord and the tenant but the suit was based on 'leave and licence', and for unauthorised occupation by the appellant, and therefore, the City Civil Court had jurisdiction to decide the suit.

10. None of the contentions raised by the learned Advocate for the appellants has any merit. Therefore, this appeal deserves to be dismissed. The decree passed by the Principal Judge, City Civil Court, Ahmedabad directing the defendants to hand over vacant possession of the suit premises is confirmed. The decree with regard to directing the defendants to pay mesne profit at the rate of Rs. 10/- per month from the date of the suit till the possession of the suit premises is handed over to the plaintiffs, is also hereby confirmed.

11. At this stage, learned advocate for the appellants requested this Court to grant time to the appellants to vacate the suit premises.

12. The request of the Learned Advocate for the appellants appears to be reasonable. The appellants are granted time of six months to hand over vacant possession of the suit premises on condition that they shall file undertaking in this Court within one month from today to the effect that the appellants shall hand over vacant and peaceful possession of the suit premises on or before 31.1.2000 and that they shall not transfer, alienate or part with possession of the suit premises to any other person till the handing over of the vacant and peaceful possession of the suit premises to the respondent.

13. For the foregoing reasons, this First Appeal is dismissed. No order as to costs.

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msp.